

Compiler's note: A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

**Technical Amendment
April 2, 2021**

102 KAR 1:340. Calculation of final average salary.

RELATES TO: KRS 161.220(9)

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.220(9) establishes the definition of "final average salary" for retirement calculation purposes, which limits the amount of increases in salaries that can be included as final average salary if those increases are received for any of the three (3) years of employment immediately prior to retirement, unless the member experiences a corresponding change in position or in length of employment. This administrative regulation establishes the method for ~~[-(4)]~~ calculating final average salary if there is a change in position or in length of employment for any of the final three (3) years immediately prior to retirement, ~~[-]~~ and ~~[(2)]~~ measuring the increase in compensation for those final three (3) years.

Section 1. Definitions.

(1) "Additional duties" means service from a duty or duties outside of the member's primary job duty. This includes compensation paid from a district's supplemental or extra service salary schedule, such as coaching, club sponsoring, and summer school teaching. Additional duties also includes extended school services (ESS). For members employed by employers that are not school districts, additional duties includes assignments, responsibilities, duties, college credit hour classes taught, grant writing, and projects that are outside of, or added to, the member's position.

(2) "Newly Created Position" means a position that did not exist at least a full twelve (12) months prior to the member's assumption of that position.

(3) "Position" means:

(a) The primary job duty performed by a member that, standing alone, earns service credit in TRS, whether that job duty is provided in full-time employment as defined in KRS 161.220(21), part-time employment, or substitute teaching; and

(b) Does not include additional duties as defined in this administrative regulation.

(4) "Previously Existing Position" means a position that existed at least a full twelve (12) months prior to the member's assumption of that position.

Section 2. A member who receives an increase in salary that exceeds the limits permitted for inclusion as final average salary pursuant to KRS 161.220(9)(b), but experiences a corresponding change in length of employment, shall have his or her final average salary calculated using salaries adjusted in the manner established in this section.

(1) The member shall receive one (1) additional day of salary for retirement calculation purposes at the member's base daily rate of pay for each day added to the member's annual contract in excess of the member's contracted days from the last immediately prior fiscal year.

(2) The base daily rate of pay used as an additional day of salary for retirement calculation purposes shall not include compensation:

(a) For extra duties worked beyond the member's primary job duty for which the member re-

ceives most of his or her compensation;

(b) That exceeds the limitations established by KRS 161.220(9)(b);

(c) That is not "annual compensation" as defined by KRS 161.220(10); or

(d) That is otherwise excluded from use in retirement calculations pursuant to the provisions of KRS 161.220 through 161.716.

(3) The additional days shall be worked days in order to have the additional salary included for retirement calculation purposes.

Section 3. ~~[(4)]~~ The limitation established by KRS 161.220(9)(b) on the amount of salary included in each of the member's three (3) highest salaries shall not apply if the increase in the member's salary is due to a corresponding change in position. A corresponding change in position only occurs if:

~~(1)[(a)]~~ The member assumes a newly created position in which all duties are new and different from the previous position the member held;

~~(2)[(b)]~~ The member moves from one (1) position to another separate, previously existing position; or

~~(3)[(c)]~~ The member assumes a second, previously existing position in its entirety, and now occupies two (2) different positions.

~~(4)[(d)]~~ For purposes of paragraphs (b) and (c) of this subsection:

~~(a)[1-]~~ For school district employers, the district salary schedule shall be proof of a previously existing position.

~~(b)[2-]~~ For other employers, proof of a previously existing position includes official employment records, such as those for classified and non-classified positions established under the state merit system.

~~(c)[3-]~~ For all employers, a title change in and of itself, shall not be proof.

Section 4. ~~[(4)]~~ The limitation established by KRS 161.220(9)(b) on the amount of salary included in each of the member's three (3) highest salaries shall apply in situations including if:

~~(1)[(a)]~~ A member performs additional duties during a fiscal year; or

~~(2)[(b)]~~ The employer changes the member's duties or responsibilities to include additional duties or responsibilities within the member's existing position; or

~~(3)[(c)]~~ The member assumes some, but not all, duties of a second position; or

~~(4)[(d)]~~ The member assumes a newly created position in which not all duties are new and different.

Section 5. (1) Members who experience a corresponding change in position shall be entitled to receive salary credit:

(a) If the employer is a school district, based upon the compensation paid to the new position from the previous year's salary schedule, plus a percentage increase equal to the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district; or

(b) If the employer is not a school district, the percentage increase received by all other members.

(2) Any contributions paid to TRS on salaries that are disallowed under KRS 161.220(9)(b) shall be refunded to the school district on the member's behalf. 102 KAR 1:340. Calculation of final average salary if there is a corresponding change in position or in length of employment during any of the final three (3) years immediately prior to retirement.

Section 6. The measurement of the limitation under KRS 161.220(9)(b) shall be applied so

that the combined increase in salary for each of the last three (3) full years of salary prior to retirement shall not exceed the total permissible, percentage increase received by other members of the employer for the same three (3) year period. (39 Ky.R. 1342; 1652; eff. 3-8-2013; Crt eff. 7-3-2019; 47 Ky.R. 360, 1193; eff. 3-2-2021; TAm eff. 4-2-2021.)